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Twenty-first session

SUMMARY RECORD OF THE FIRST PART (PUBLIC)* OF THE 345th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 9 November 1998, at 10 a.m.

Chairman: Mr. BURNS

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* The summary record of the second part (closed) of the meeting appears as document CAT/C/SR.345/Add.1.

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The meeting was called to order at 10.05 a.m.

ADOPTION OF THE AGENDA (item 1 of the provisional agenda) (CAT/C/46)

1. The provisional agenda (CAT/C/46) was adopted.

ORGANIZATIONAL AND OTHER MATTERS (agenda item 2)

2. The CHAIRMAN drew the Committee's attention to the seminar, being held during the Committee's twenty-first session on "Enriching the Universality of Human Rights: Islamic Perspectives on the Universal Declaration of Human Rights", and encouraged members to attend if they were able to do so. He also reminded the Committee of the requirement for a quorum of six members.

3. He drew attention to a draft code of conduct for experts, formulated by the meeting of the persons chairing the human rights treaty bodies, and asked members to familiarize themselves with it. A discussion on the draft code would be held during the second week of the session and the Committee's views would be communicated to the secretariat.

4. The annex to document A/52/432 contained the report of the tenth meeting of the persons chairing the human rights treaty bodies, which he had attended. At the meeting, the chairpersons had expressed their concern about the shortage of resources and had agreed that efforts should be made to coordinate the production of reports, with a view to reducing the reporting burden on States parties. That initiative might not, however, affect reports submitted to the Committee against Torture, because of the distinct nature of its subject matter. They had also expressed their views on the composition of the treaty bodies and had encouraged committees to attempt to redress gender and geographical imbalances. Although the Committee against Torture had, for example, no female members, it had been pointed out that another committee had no male members. At least one of the committees had no members from Africa.

5. The chairpersons had also agreed that the human rights treaty bodies should meet both in New York and in Geneva, as was the practice of the Human Rights Committee, for two reasons: first, in New York the committees could have contacts with many States parties that had no permanent missions in Geneva; and second, human rights questions received much greater media coverage in New York than they did in Geneva. The chairpersons had left it to the secretariat to determine how to respond to those recommendations in designing its budget.

6. The chairpersons had also discussed the preliminary conclusions adopted by the International Law Commission relating to reservations to normative multilateral treaties and had taken the view that they were unduly restrictive. The chairpersons had considered that, since human rights treaties bore on the rights of individuals rather than of States, they were not the same as traditional conventions and treaties and should be regulated differently. The Committee should discuss the preliminary conclusions during the present session and communicate its views to the Commission, which was still debating the topic. Copies would be circulated to members. It would be useful to hear members' views, particularly as other human rights treaty bodies had expressed themselves in such strong terms.

SUBMISSION OF REPORTS BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4)

7. Mr. BRUNI (Secretary of the Committee) said that, of the 105 initial reports that had been expected between June 1998 and October 1998, 70 had been submitted and 35 were overdue. Among those, 21 were more than three years overdue. The States concerned, in order of lateness, were Uganda, Togo, Guyana, Brazil, Guinea, Somalia, Estonia, Yemen, Benin, Bosnia and Herzegovina, Cape Verde, Cambodia, Latvia, Seychelles, Antigua and Barbuda, Burundi, Slovakia. Slovenia, Costa Rica, Ethiopia and Albania. Each of those States had received between 5 and 16 reminders, including letters from the Chairman to their Ministries for Foreign Affairs, depending on the length of the delay. In addition, at its eleventh session the Committee had requested Belize to submit a new version of its report, which had been too short, by 10 March 1994. Despite six reminders and a letter from the Chairman to the Minister of Foreign Affairs, the report had not yet been received.

8. Of the 78 second periodic reports expected between June 1992 and October 1998, 48 had been submitted, and 30 were overdue. Of those, 12 were more than three years late: those of Afghanistan, Belize, Cameroon, Uganda, Philippines and Togo, which should have been submitted in 1992; those of Guyana and Turkey, which should have been submitted in 1993; and those of Australia, Brazil, Guinea and Somalia, which should have been submitted in 1994 and 1995. Between one and nine reminders had been sent to each of those States.

9. Of the 46 third periodic reports that had been requested for the period between June 1996 and October 1998, 15 had been submitted and 31 were overdue. States that were two years late had already received two reminders. As a result of information from independent sources on the human rights situation in Egypt, the Committee had decided to press Egypt to submit its third periodic report as soon as possible. After an exchange of letters between the Committee and the Government of Egypt, the report had arrived on 30 October and it would be placed on the programme of work for the coming year.

10. After the consideration of its third periodic report, Mexico had for the second time sent supplementary information, which had been brought to the attention of the rapporteurs for Mexico, Mr. González Poblete and Mr. Sørensen. In addition, Denmark had sent written replies to questions raised by the Committee that had remained unanswered during the consideration of its third periodic report. Since Mrs. Iliopoulos and Mr. Regmi, the two rapporteurs for Denmark, were no longer members of the Committee, that document was available for perusal by all members. Cyprus had also sent supplementary information, which had been passed on to Mr. Burns and Mr. Sørensen.

11. In addition to the report of Egypt, a large number of reports had been received and would be placed on the programme of work for 1999: those of Austria, Bulgaria, Italy, Libyan Arab Jamahiriya, Liechtenstein, Luxembourg, the former Yugoslav Republic of Macedonia, Malta, Mauritius, Morocco and Venezuela. A report had also been received from the Netherlands on its overseas territories, but, as the text was still being revised, the Government had requested the Committee to defer placing it on its programme of work.

12. Two State parties, Antigua and Barbuda and Yemen, had asked the secretariat to assist them in preparing their reports. Officials from Yemen had taken part in a course held in Turin in October, and officials from Antigua and Barbuda had been asked to take part in a course that would probably be held in the Caribbean region in December. Members of the secretariat had attended the course in Turin and had assisted in teaching participants how to prepare reports. Representatives of the Governments of Azerbaijan, Bangladesh, China, Georgia, Lithuania, Saudi Arabia and Sri Lanka had also attended.

13. The CHAIRMAN said that presumably the Committee would continue its practice of writing to tardy States and including in the annual report the list of States which had not sent in their reports, indicating how late they were.

14. Mr. MAVROMMATIS said that eventually it would be necessary to consider two issues. First, did the Committee confine itself to sending useless reminders or did it follow the example of other treaty-monitoring bodies and try to meet with representatives of countries and explain to them the need to reply? The Human Rights Committee, for example, had obtained some, albeit limited, results with that approach. Second, in cases in which the reports of certain countries had been due for more than 10 years, it might be better for the Committee to examine the situation on the basis of other available information. Even the threat of so proceeding might prompt States to reply.

15. The CHAIRMAN assured Mr. Mavrommatis that it was an issue which had been discussed repeatedly. Mr. Sørensen had been urging the Committee to take such action for many years. As he saw it, article 19 appeared to give the Committee jurisdiction only to deal with a State report once it had been submitted, but not if no such report had been submitted in the first place. Second, if a State had clearly demonstrated an unwillingness to comply with the Convention, then its failure to report should be deemed a breach of that instrument. By drawing the failure to the attention of States parties, States parties themselves had jurisdiction to denounce it in those circumstances. Thus, the question was why such action was to be taken by the Committee, and not by the States parties, on which the primary obligation lay.

16. Mr. SØRENSEN said it was very difficult for the Committee to accept that a country could ratify the Convention and then fail to report for many years.

17. The CHAIRMAN said there was a notion that in the case of grossly overdue reports, the Committee could examine the situation in the State concerned and produce a report on its own.

18. Mr. ZUPANČIČ said that for some of the countries concerned, the matter was simply financial. His own personal experience with Slovenia had been that that country had been working very hard to put together its report, but did not have the personel to do so quickly and properly. He assumed that there were other countries in a similar situation and wondered whether they could be provided with additional professional training.

19. The CHAIRMAN said that, according to the secretariat, Uganda had participated in a training course on reporting. Presumably other countries were willing to do so as well. On the other hand, the authorities in Brazil had had a discussion on the matter with the Chairman in 1993, but unfortunately there had been no results.

20. Three themes had cropped up repeatedly at the meeting of chairpersons held in Geneva and attended not only by States parties to the Convention but also non-States parties. The first was that States regarded as unreasonably short the time allowed to respond to questions under the procedures of most of the treaty-monitoring bodies, and in particular of the Committee against Torture. Second, States had been concerned that the second and third periodic reports often posed questions which had already been answered earlier. Third, and most important, for many small States the cost of reporting was a considerable financial burden. That was why the High Commissioner for Human Rights was looking into ways of rationalizing the reporting system. The point made by Mr. Zupančič was a valid one: some very poor States simply did not have the resources needed to report. Last summer he had been to Cambodia, where there was only one person responsible for dealing with all international organizations. It was materially impossible for such a State to respond. The Committee had to strike a delicate balance between, on the one hand, a State's ability to reply, and on the other, the need to take action to examine the situation regarding torture in the country concerned and a State's obligations under the Convention.

21. Mr. MAVROMMATIS said it was clear that the Committee needed to discuss that issue later in greater depth.

22. He agreed with Ms. Higgins, a former member of the Human Rights Committee and now a judge at the International Court of Justice, that in international law anything which promoted the purposes and principles of the Convention and was not explicitly excluded should be allowed. The most pragmatic aspect was that of assistance. If experts visited the countries in question, the benefit would be enormous. That could be combined with advisory services. Some training services were good, but some led nowhere. The Committee should try to combine reporting obligations with assistance in order to improve the actual record of those countries, and not just what they put on paper. It was a question of organization.

23. The CHAIRMAN said that the Committee could revert to the question later in the session.

24. He drew attention to the matter of General Pinochet, who had been detained in London at the request of a Spanish investigating magistrate with a view to having him extradited to Spain to be charged with committing certain international crimes. Several years ago, when General Pinochet had visited the Netherlands, the Committee had sent a message to the Netherlands Government requesting his detention and trial on charges that torture had allegedly been committed in Chile while he had been President of that country. The Netherlands Government had responded that a Netherlands judge had decided not to take action, having concluded that there was no likelihood of securing a conviction. That had made sense. If it had no evidence available, the Netherlands could hardly pursue such a serious matter. The English case was

somewhat different, in that it involved a hearing on a request for extradition made by another State. The matter had initially been decided by a High Court judge, who had taken the very surprising view that heads of States had sovereign immunity from prosecution. The case was currently before the House of Lords and it would be improper for the Committee to comment on it. He simply wanted to say that he greatly welcomed the way in which the matter was unfolding. That very week, pursuant to the Convention against Torture Scotland was prosecuting a northern African national for acts of torture perpetrated in North Africa. To his knowledge, it was the first time that the Convention had served as a basis for prosecuting someone for the crime of torture committed in another State. That showed the importance of the availability of evidence. Victims were apparently present in the United Kingdom and, indeed, had been complainants. Hence, direct evidence was available in Scotland. It was worth noting that the case was being prosecuted at the present time.

25. Mr. SØRENSEN said it was very gratifying that the Chairman had brought up the question. It would be useful if the Committee could obtain the names of the persons concerned and information on the Scottish court's decision in due course. If he was not mistaken, there had been an earlier case in Canada of two persons from Honduras whose trial had been imminent, but they had fled to the United States.

26. The Scandinavian countries had been following the Pinochet case very closely, and some had suggested invoking article 6 of the Convention. The Committee might provide the United Kingdom with information of relevance to the case, because when Chile had reported to the Committee, it had stated that roughly 100,000 persons had been tortured during the Pinochet regime. In his view, the United Kingdom prosecutor should accuse Mr. Pinochet of being responsible. It was of paramount importance to discuss cases of torture publicly, because it was the first step towards rehabilitation for the victims.

27. The CHAIRMAN thought that, although the Committee could express its opinion to the United Kingdom, it would be unwise for it to interfere in ongoing domestic judicial proceedings.

28. Mr. GONZALEZ POBLETE said that it was entirely appropriate for the Committee to be considering the subject at hand, but that, as he was a Chilean citizen, he did not intend to take part in any of the discussions.

29. Mr. CAMARA said he had been somewhat puzzled to learn that the United Kingdom saw legal difficulties in extraditing a former head of State. One might wonder whether the United Kingdom was a party to the Convention against Torture, since the purpose of article 2 of that instrument was to prevent persons from claiming immunity in any case involving torture. If the English system really constituted such an obstacle to the application of articles 2 and 7 of the Convention, then the Convention had no meaning. If it did not constitute an obstacle, the Committee might even bring forward the date for considering the United Kingdom report and express its opinion before the English courts took an irreversible decision. Given that the United Kingdom might be about to violate its obligations under the Convention, the Committee should perhaps intervene.

30. The CHAIRMAN said that, for extradition purposes, General Pinochet was accused of crimes against humanity, and all States had universal jurisdiction for such crimes. He thought the issue could indeed be raised when the United Kingdom report was presented, but the delegation would naturally be extremely diffident while the matter was before a court.

31. Mr. ZUPANČIČ said he would be unable to participate in the discussion because he had recently been elected to the European Court of Human Rights, which was currently considering two cases concerning Mr. Pinochet.

32. Mr. EL MASRY said that the Committee should ascertain all the facts of the case concerning Mr. Pinochet, particularly the arguments on which the English High Court ruling had been based. The United Kingdom delegation to the United Nations Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court had actively supported the principle that someone's status should not provide immunity from the crimes covered by the Court's Statute.

33. The CHAIRMAN said that the secretariat would obtain the text of the High Court ruling and circulate it to members of the Committee.

The public part of the meeting rose at 11.10 a.m.